

Making It Real

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Implementation Plan for the *City of Milpitas Code of Ethics*

DEVELOPED FOR THE MILPITAS ETHICS PROGRAM

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A. Introduction

In early March, two key questions were posed as part of the *Code Development Plan* (p. 5):

1. Can the City Council, Commissioners and Board members, the Citizens Advisory Council, other citizens, City Management, Department Heads, and other involved parties agree on **a definition and code of ethical behavior** for elected and appointed officials, those running for office, and for the City's executive staff?
2. Assuming such an agreement, can the City and all the groups to whom the Code applies **develop the habit of incorporating this Code** into everyday actions?

It was clear to all who had participated in the last Code Development Workshop on May 5, 2004, that the answer to Question 1 was "yes" (pending Council approval of the final version of the Code on June 1, 2004).

Question 2 focuses us on our next challenge: how to make the *Code of Ethics* real in the daily decisions of those to whom it applies. The goal of this implementation plan is to help the City integrate the *Code of Ethics* into the everyday actions of the City and to propose other actions the City might take to implement its *Code of Ethics* and build public trust.

B. Overview of the Implementation Plan

There are 4 key success factors for the implementation of the *Code of Ethics* in Milpitas. The key success factors are :

1. continuous practicing of the code and its values;
 2. creating a positive "culture of recognition" to highlight extraordinary public service consistent with the new *Code of Ethics*;
 3. developing public trust through
 - a. involvement of the public, encouraging them to hold their leaders accountable and
 - b. an effective accountability program with standard procedures and processes when people do not practice the *Code*; *and*
 4. establishing effective and knowledgeable leadership of the program through training to
 - a. develop role models,
 - b. decision making consistent with the Code and
- c. recognition of inconsistent behaviors to address and correct them.

These key success factors are presented below in greater detail with proposed implementation strategies (in bold type).

C. Putting the Code into Practice

Many participants came to their first workshop skeptical about the community's chances for developing a workable Code. By the end of the process, they were surprised and

proud at how successful some 100 residents and senior staff could be in creating a Code every participant in the final workshop could support.

Their work puts the community in a very strong position as we begin implementation. In addition to identifying the six core values of the Code, the group developed a clear description of what those values ought to look like in practice, as well as behavioral standards for each value.

Behavioral standards were developed for those currently serving the City, as well as for those seeking public office. This detailed work makes the Code very clear and very practical right from the start.

In addition, the 100 people who participated in drafting the Code have a vested interest in promoting, maintaining, and developing it. These ambassadors really jump-start the Code's implementation and will contribute significantly to the Code's success.

This group also understands that implementing the Code can be done in simple ways. For example, throughout the workshop process participants were asked, "How well did we do at practicing the values we have been working on?" "What could we do better the next time?" The questions engaged the group in an honest and constructive self-evaluation, leading to improvements for subsequent workshops.

An important implementation activity whenever the City can practice it is to make the City's Code a regular part of the conversation – as common as discussion about the budget and city services. A simple way to do this would be: at the end of periodic Council, Board, Commission, and Staff meetings, spend a few minutes asking questions like, "How well did we do during this meeting with the values in the Code? Which were easy to practice? Which were more challenging?" These few minutes of honest reflection in a safe environment build a group's sense of itself as a team at the same time that it advances their understanding of the Code. It should also lead to improvements for subsequent meetings. Posting of the Code in rooms where these groups meet also would aid in establishing practices consistent with the Code.

D. A Culture of Recognition

The final Code Development Workshop ended with a group picture and an invitation to receive public thanks for work on the Code at the Council meeting on June 1, 2004. At that time, the City will thank those who gave up one or more evenings to help make this process successful.

In making this public thanks, the City introduces another important element in the implementation of the Code: the developing of a "culture of recognition," whose goal is to make a habit of thanking people who live the City's values in best practice.

Research is quite clear that ethics grows best in a positive environment. People become even more committed to the values and work even harder for the City when they are thanked.

The annual Board and Commission Recognition Dinner is a perfect opportunity to thank citizens, Management, and Senior Staff for extraordinary contributions as role models of the City's values. There are many ways to construct such an evening, but the basic goal is for people to receive genuine thanks and to hear the stories of individuals who face the challenges of public service with humor and conviction, give generously of their time, and work *at their best* for the good of Milpitas. In honoring them, the City continues to develop a values-centered culture.

E. Developing Public Trust

There is a clear link between accountability and public trust. Even in the absence of a written Code, the public expects that those who govern it will work for the best interests of the City and not their own individual interests; they expect honesty, fairness, and a commitment to the common good. When a public official fails in one or more of these, the public has a very effective mechanism to hold the officials accountable and that is at the ballot box.

The public also expects officials who operate on the public's behalf to hold each other accountable. This is even more the case once a City goes on the record as being committed to a specific *Code of Ethics*. Once the behaviors are made this explicit, public trust requires appropriate accountability.

Yet, ethics programs succeed only if they are positive. "Positive" means we are clear about the behaviors we expect consistent with our Code; we celebrate successes and engage in positive reinforcement; we tell stories of values-centered behavior and recognize people who went beyond our expectations.

We need to close the loop and describe what happens when people demonstrate behavior that clearly violates our basic values. What happens when people cross the line, perhaps repeatedly?

Research and common sense are clear on this point: if nothing happens to alter the "politics as usual" culture in Milpitas, the *Code of Ethics* will be a wonderful document with no teeth. Given the City's desire to affect the conduct of political campaigns this year, the recommended measures to develop public trust are designed to catch the attention of candidates and the public alike.

- 1. Conduct a workshop for candidates running for office. This workshop, to be held in early August after candidates are officially declared, would focus on how to conduct a political campaign consistent with the *Code of Ethics*. Candidates are invited to attend, along with their consultants, volunteer coordinators, family members, etc. This would be a practical workshop, exploring strategies candidates can use to conduct hard-hitting issues-oriented campaigns, consistent with the Code. The workshop should be open to the media, interested citizens, and others.**
- 2. Sponsor a post-election assessment session to hold candidates accountable for the ethics of their campaigns. Invite voters to come to this very important event in order to help shape Milpitas' future elections. The**

workshop will ask questions like, “How well did we do at keeping our promises? How did we handle the third parties who try to help us? What does the City need to do differently going forward? The workshop should be held in December or early January.

Council-attended, post-election assessment sessions, held by the CAC as part of their work plan responsibilities, could be held after all future elections to gauge the on-going effectiveness of the *Code of Ethics* in setting expectations for Milpitas elections. The results of these sessions could be reported by the CAC to Council with any recommendations for modifications to the Ethics Code and ethics program. This regular assessment and reporting of the program’s effectiveness could precede and establish the framework for the review and updating process for the Code of Ethics that needs to occur once every two years.

3. **Actively seek partners who can also hold candidates accountable.** For example, in the 2002 election, the Central Democratic Committee of Santa Clara County censured one of its members for unethical behavior while campaigning for others. The Committee took this action because it had signed on as a partner with the County Campaign Ethics Foundation and agreed to hold Democratic leaders accountable for ethical behavior. In Milpitas, partners could encourage ethical campaigns or withdraw an endorsement from a candidate who acts in ways inconsistent with the *Code of Ethics*.
4. **Discourage use of the County Ethics Foundation’s process.** The new City Code of Ethics makes the County Ethics Foundation Code unnecessary. Despite the Foundation’s good intentions, it has inadvertently created another negative campaign strategy by giving candidates the opportunity to lodge spurious complaints just before the election in order to gain headlines.
5. **Pursue opportunities that provide citizens with information about both sides of claims made by candidates and their opponents in the last few days before the election.** Variations of such opportunities include a) sponsoring an “ad watch” program that publishes accurate information about claims made, b) providing web space for candidates and their opponents to quickly post their own claims and rebuttals and c) hosting debates between candidates. Independent, objectives groups interested in providing this public service and paying attention to ethics efforts in Milpitas would be needed for this to succeed.
6. **Explore the viability of a public information program that gives voters the tools they need to independently assess the ethics of a candidate prior to voting.** The City of Santa Clara is developing such a program for their November 2004 election and has offered to share its materials. These materials do not tell citizens how or for whom to vote. They help citizens determine who pays for a mailer they’ve received or where it comes from, how to evaluate a comparison piece to see if it is consistent with the ethics promises candidates make, etc. The Santa Clara materials, which are still

under development, encourage candidates to focus on issues citizens care about and on relevant comparisons with opponents. The information program uses available media, flyers, posters, etc. Santa Clara has offered to make the original materials available for distribution as Milpitas sees fit.

If such a campaign is feasible in Milpitas this year, it would serve the dual purpose of introducing the new *Code of Ethics* to citizens and involving them actively in better government in Milpitas.

7. Institute a lobbyist registry requirement. It is recommended that a lobbyist be defined as a person that receives at least \$500 for communicating, using any means, with City employees or officials to influence current or future City legislation or official decisions. The registry should be maintained by the City Clerk. Moderate registration and processing fees should be considered, and the registry should be posted on the City's website. San Francisco and Los Angeles are examples of cities with such programs. This measure received strong support from citizens involved in the workshops and on the citizen survey.
8. Consider the value of funding-related programs other cities have adopted as part of their ethics efforts, after this election cycle. These involve public campaign matching funds, voluntary expenditure limits, etc. Such programs are not possible for this election as fundraising has already begun.
9. Implement a complaint process. Although the creation of an ethics review board is not recommended for efficiency and impartiality reasons, there needs to be a process to file and quickly and fairly resolve complaints related to the *Code of Ethics* and behavioral standards for those currently serving the City and those running for office. Whenever citizens are promised certain behaviors from public servants, they have a legitimate right to such treatment and to a process that reviews their experience with public servants to be sure it was consistent with the *Code of Ethics*. The specifics of this proposal need further consideration. However, if the City Council determines that in addition to the implementation measures recommended above that are centered around recognizing behavior that is consistent with the *Code of Ethics* and increasing awareness of and identifying behavior that is inconsistent, a basic complaint process could be established.

In this process, a pool of 3, paid ethics evaluators would be hired by the City. The City Clerk would function as a clearinghouse for complaints filed against candidates, elected and appointed officials and the City Manager (complaints against Senior Staff would be handled through the City's standard disciplinary processes). These evaluators could be ethics consultants, retired judges, lawyers, arbitrators and other individuals with the credentials to review and adjudicate ethics complaints. They should not live in the City of Milpitas or vote in its elections and should be independent and impartial. Complaints would be forwarded by the City Clerk to the lead ethics evaluator who would be responsible for issuing a written decision and imposing appropriate, adopted sanctions in

consultation with the pool of evaluators consistent with a clear, pre-established, transparent process.

Safeguards could be put in place to allow legitimate complaints during and after campaigns, but prevent spurious ethics charges. For example, the City of Los Angeles makes the lodging of such complaints confidential. Milpitas could establish a window around election times when such complaints were not accepted.

In certain cases involving Council Members, the ethics evaluator may recommend additional Council action. In some cases, involvement of the District Attorney or the State Fair Political Practices Commission might be considered. Sanctions should be adopted in the City's Municipal Code. Language and sanctions such as the following are recommended:

Any violation of the Code of Ethics by a member of the City Council, or by another elected or appointed official, or by a candidate for office shall constitute official misconduct. In addition to any criminal or civil penalties provided by Federal, State, or local law, any violation of the Code of Ethics shall constitute grounds for an official warning, condemnation, or censure.

F. Effective and Knowledgeable Leadership

This is the single-most important element in the success of any Code implementation. If the Council and City Manager are not credible role models for the Code, it will be difficult to expect anyone else to follow it or practice its values. For credible ethical leadership, the public must believe that three things are happening simultaneously: 1.) the Council and the Manager must be visible role models for the City's values, 2.) all decisions should be consistent with the *Code of Ethics* and 3.) stumbling blocks and behaviors that are not consistent with the Code are systematically addressed and changed. To accomplish this, the following is recommended:

For the Council:

1. **A required workshop titled, *Communicating Ethics: Building Trust and Mutual Respect*.** In this workshop, the Council would be encouraged to clear the air. The workshop would also focus on how to be role models for the Code of Ethics and discuss how to campaign ethically or help others campaign ethically and skills for communicating about ethics. (June)
2. **A required workshop titled, *At Our Best: Ethical Decision-Making*.** This workshop would address stumbling blocks, focus on difficult decisions and introduce case-based ethics decision-making process. (November)
3. ***Feedback Sessions:*** Consultant attends two Council meetings and either in person or in writing reports to Council on strengths and opportunities to advance Ethics Code during regular Council meetings. (July, December/January)

For the City Manager and Senior Staff:

1. The consultant would observe two regular staff meetings for the purpose of designing Code Training tailored to the Senior Staff (Summer)
2. One required workshop with Senior Staff patterned after Council Workshop 1 above. (September)
3. One required workshop patterned after Council Workshop 2 above. (October)

For Board and Commission members:

1. A required workshop titled, *At Our Best: Building Public Trust as a Commissioner*. This workshop would introduce the Code of Ethics and its application to the work of the Boards and Commissions. (October – December)

After completing the required workshop(s), the elected and appointed officials and senior staff would be expected to sign a statement indicating they had received the *Code of Ethics* and understand its expectations. Lastly, recurring sessions of the above training workshops need to be conducted regularly for newly appointed and elected officials, as well as new senior staff members.

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